

PT 98-55

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

ART ASSOCIATION OF JACKSONVILLE

Applicant

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

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Docket #

95-69-26

Parcel Index #

12-08-20-237-003

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Jeffrey L. Soltermann appeared on behalf of the Art Association of Jacksonville.

Synopsis:

The hearing in this matter was held on February 26, 1997, at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, to determine whether or not Morgan County Parcel Index No. 12-08-20-237-003 qualified for exemption from real estate taxation for the 1995 assessment year.

Ms. Kelly Gross, director of the David Strawn Art Gallery; Ms. Michelle Hinchey, a member of the Board of Trustees of the Art Association of Jacksonville, (hereinafter referred to as the "Applicant") and chairman of the education committee; and Mr. Harmon B. Deal III, a board member and treasurer of the applicant, were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant is a charitable organization; secondly, whether the applicant owned the parcel here in issue during the 1995 assessment year; and finally, whether the applicant used this parcel and the mansion thereon for primarily charitable purposes during the 1995 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a charitable organization. It is also determined that the applicant owned this parcel during the entire 1995 assessment year. It is further determined that the applicant used this parcel and the mansion thereon for primarily charitable purposes, except for the caretaker's quarters located on the second floor of the mansion during the 1995 assessment year.

It is therefore recommended that Morgan County Parcel Index No. 12-08-20-237-003 and the mansion thereon be exempt from real estate taxation for the 1995 assessment year, except for the caretaker's quarters located on the second floor of the mansion on this parcel, consisting of 1333 square feet and 9.7% of the land on which the mansion is located.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption for the 1995 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 5A.

2. On March 6, 1996, the Morgan County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcel here in issue and the mansion thereon for the 1995 assessment year. (Dept. Ex. No. 1)

3. On October 3, 1996, the Department advised the applicant that it was denying the exemption of this parcel because said parcel was not in exempt ownership or exempt use. (Dept. Ex. No. 2)

4. By a letter dated October 18, 1996, the treasurer of the applicant requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing in this matter, conducted on February 26, 1997, was held pursuant to that request.

6. The applicant acquired this parcel by a warranty deed dated May 4, 1915. (Dept. Ex. No. 1B)

7. The applicant was incorporated on March 15, 1875, for the following purposes:

. . . the study and appreciation of the Fine Arts, especially the Arts of Design, by the formation of a public collection of art treatises, pictures, engravings, photographs, casts, models, and such other material as shall aid in this purpose: and furthermore by lectures, essays, discussions and exhibitions, and by the encouragement of a school of design – said association being not for pecuniary profit- (Dept. Ex. No. 1C)

8. Morgan County Parcel Index No. 12-08-20-237-003, during 1995, was improved with a three-story mansion with a basement. This mansion was commonly known as the David Strawn Art Gallery, which was owned by the applicant, the Art Association of Jacksonville. (Tr. pp. 11-13)

9. The basement of the mansion, during 1995, contained the applicant's library, a pottery workroom, a classroom and household and exhibit storage. (Tr. pp. 13-15)

10. The applicant's library of art and art history is open to the public. Members of the public may not only use the library but also may borrow books from the library. There is no charge to the public for the use of the library. (Tr. pp. 30 & 31)

11. The first floor of the mansion at the north end contains the east gallery and the west gallery. In the east and west galleries are temporary exhibits. Also in that area is the hallway gallery, which contains a portion of the applicant's permanent collection. The applicant hosts temporary exhibits in the east and the west galleries each year from September to the following May. (Tr. p. 15)

12. In the South portion of the first floor are the gallery director's office, a meeting

room, and a modern kitchen. (Tr. pp. 15 & 16)

13. The second floor of the mansion contains the Phebe Gates-Strawn Memorial bedroom, the doll room, the parlor room, the library room, and the caretaker's apartment. (Tr. pp. 17 & 18)

14. The doll room contains a doll collection, which is one of the applicant's permanent collections. The Phebe Gates-Strawn Memorial bedroom, the parlor room, and the library room all contain period furniture and artifacts which belonged to the Strawn family. (Tr. pp. 17 & 18)

15. The library in the basement, the galleries on the first floor, the doll room, and the period-furnished rooms on the second floor are all open to the public and are included in the gallery and mansion tours. These tours are offered to the public at no charge. The tours are available when the gallery is open or by appointment. (Tr. pp. 15-18)

16. During 1995, the mansion was open to the public Tuesdays, Wednesdays, and Thursdays from 9:00 A.M. to 11:00 A.M.; Tuesdays through Saturdays from 4:00 P.M. to 6:00 P.M.; and also on Sundays from 1:00 P.M. through 3:00 P.M. (Tr. p. 20)

17. All of the rooms on the third floor of the mansion are used for the storage of old furnishings from the David Strawn house, items that the applicant has used in fundraising, and for the storage of the applicant's business records. The cupola, which is above the third floor is used for the storage of various items of furniture, which need to be repaired or are not currently being used. The caretaker's apartment on the second floor, the third floor, and the cupola are not open to the public. (Tr. pp. 18 & 19)

18. During 1995, the applicant had approximately 546 memberships. A student membership was \$15.00, a single membership was \$30.00, a family membership was \$40.00, a sustaining membership was \$100.00, a single life membership was \$600.00 and a couple life

membership was \$1000.00. The only benefit which a member received was a \$5.00 discount on the cost of an art class offered by the applicant. Occasionally a member received a newsletter from the applicant. (Tr. pp.22 & 23)

19. Before the applicant hosts shows by various artists in the gallery, the director of the gallery works with the art exhibit committee of the applicant to invite various artists to exhibit their work in the gallery. (Tr. pp. 23 & 24)

20. An artist whose work is featured in the gallery is not required to be a member of the applicant. It is not required that an artist sell any of their work during the show. If artwork is sold, the applicant does not take any commission, and the artist keeps the total sales price. The applicant pays a \$100.00 honorarium to an artist who shows their work in the gallery. If the artist is from away from Jacksonville, the applicant will pay mileage expense to them up to 800 miles. (Tr. pp. 24 & 25, Appl. Ex. No. 9)

21. During 1995, a majority of the artists who conducted shows in the gallery were nonmembers of the applicant. (Tr. p. 25)

22. The schedule of art classes offered by the applicant is sent to the members of the applicant and people who have previously taken classes. Class schedules are also distributed to local public and private schools, area schools, and state schools. (Tr. p. 38)

23. The applicant also advertises its classes both in the newspaper and on the radio. (Tr. p. 39)

24. Both the art class flyers and the newspaper advertisements, during 1995, contained statements that scholarships were available. (App. Grp. Ex. 13)

25. The school teachers or the parents of children who would like to attend the applicant's art classes and who cannot afford to pay will call the applicant's education chairman and advise her of the circumstances. The education chairman accepts the school teacher's or parent's statement and enrolls the child in the class. The applicant's scholarships are in effect

tuition abatements. During 1995, scholarships were available to both children and adults. However, no adults applied for scholarships during 1995. (Tr. pp. 41 & 42)

26. Classes are open to members and nonmembers of the applicant. The only advantage to members in taking the classes is the previously mention \$5.00 discount on the class tuition. (Tr. p. 38)

27. A majority of the teachers who teach the art classes of the applicant are nonmembers of the applicant. The applicant's art teachers are paid a salary which varies from \$13.50 per hour to \$15.00 per hour, depending on the number of classes the teacher has taught for the applicant in the past. (Tr. pp. 44 & 45)

28. During November or December each year, Wood Haven Hospice, a support group for terminally ill patients in the Jacksonville area, holds a festival of Christmas Trees in the mansion. The applicant does not charge the Hospice for the use of the mansion. Other local charitable or art groups were also allowed to use the mansion for meetings or receptions at no cost, during 1995. (Tr. p. 34)

29. The applicant during 1995 was exempt from federal income tax pursuant to Internal Revenue Code Section 501 (c)(3). (Dept. Ex. No. 1P)

30. The applicant has no stock and no shareholders and no one profits from the enterprise. (Tr. p. 51)

31. During 1995, the applicant's primary sources of funds were fundraisers and interest and dividends on charitable contributions received in prior years. The applicant's other sources of funds were tuition and fees and membership dues. (Appl. Ex. No. 3, Tr. p. 53)

32. The caretaker's apartment located on the second floor of the mansion contains 1333 square feet. Said 1333 square feet constitutes 9.7% of the total square footage of the mansion which is 13,872 square feet. (Tr. p. 62, Appl. Ex. No. 2)

33. The caretaker's apartment during 1995 was occupied by Mr. Robert Gregory and his wife. Mr. Gregory was the applicant's caretaker. Mr. Gregory was not paid a salary, but did

receive the caretaker's apartment rent-free. The applicant also paid all utilities on the apartment, except the telephone. (Tr. pp. 63 & 69)

34. Mr. Gregory's duties included mowing the yard and snow removal on this parcel as well as cleaning and light maintenance within the mansion. He also was required to open the mansion for authorized persons and to see that the mansion was locked. In addition, he was required to provide security within the mansion when it was closed. (Tr. pp. 64, 66-70)

35. Mr. Gregory also worked at a Jacksonville funeral home and had a paper route. Mr. Gregory's job description did not require that he be in the mansion at any particular time. (Tr. pp. 66 & 67)

36. During 1995, both a fire alarm and a burglar alarm protected the mansion. If the fire alarm was activated, it alerted the Jacksonville Fire Department. If the burglar alarm was activated, it notified the Jacksonville Police Department. This parcel was within the Jacksonville city limits in 1995. (Tr. pp. 67-69)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....
- (e) all free public libraries.

It is well settled in Illinois that when a statute purports to grant an exemption from

taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

In the case of Vermilion County Museum Society v. Department of Revenue, 273 Ill.App.3d 675 (4th Dist. 1995), the Court determined that a museum may qualify as a charitable organization.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. Based on the foregoing findings of fact, I conclude that since the applicant provides scholarships for its art classes, does not charge for the tours of the mansion or the art shows, and its library is open to the public at no cost, that the benefits are available to an indefinite number of persons. I also conclude that the applicant has no capital, capital stock, or shareholders. In the case of DuPage Art League v. Department of Revenue, 177 Ill.App.3d 895 (2nd Dist. 1988), the Court

determined that since only members of the league could exhibit their art work, which was required to be for sale, the primary beneficiaries were its dues paying members. The league also offered art classes again which were required to be taught by members of the league who received 80% of the tuition charged, which also led the Court to conclude that the primary beneficiaries were the dues paying members of the league. That case also determined that the league did not waive or reduce fees in cases of need.

In the case here in issue, the applicant allowed anyone, either a member or a nonmember, to exhibit art. The artist determined whether or not the art was for sale. Also anyone, whether a member or not, could teach an art class. The art teachers in this case were paid a flat fee per hour. I therefore conclude that no one benefited from the applicant's enterprise. Since the applicant's primary sources of funds were fundraisers, interest and dividends on charitable contributions received in prior years, and tuition, fees and membership dues, I conclude that the applicant's funds are derived mainly from private and public charity and are held in trust for the objects and purposes expressed in the charter.

I also conclude that since the applicant does not charge for gallery tours, tours of the mansion, or the use of the library by the general public, that no obstacles are placed in the way of those seeking the benefits. In addition, I conclude that because the applicant offers scholarships to anyone who cannot afford the tuition for the art classes, that charity is dispensed to all who need and apply for it and that no obstacles are placed in the way of those seeking the benefits.

While the applicant does charge membership dues, it does not restrict any of its services to only members, and the membership dues appear to be merely a method of fundraising. I also conclude that except for the 1333 square foot caretaker's apartment and 9.7% of the land on which the mansion is located, this parcel and the mansion thereon were primarily used for charitable purposes during the 1995 assessment year.

The next issue to be considered in this matter is whether or not the caretaker's apartment, which contains 1333 square feet and which is located on the second floor of the mansion qualifies for exemption. The caretaker's duties included lawn care, snow removal, cleaning the

mansion, light maintenance, and providing security for the mansion when it was closed. The caretaker had other employment and was not required to be in the mansion at any specific time. Also, there were both a fire alarm and a burglar alarm in the mansion which notified the local authorities responsible for fire and police protection. In the case of MacMurray College v. Wright, 38 Ill.2d 272 (1967), the Supreme Court considered whether or not faculty and staff housing owned by a college was used for school purposes. In that case, the Court applied a two-part test. First, were the residents of the houses required to live in their residences because of their exempt duties for the college, and/or were they required to or did they perform any of their exempt duties there? The Courts have more recently applied the MacMurray tests to caretakers' residences in Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill.App.3d 325 (2nd Dist. 1987); Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill.App.3d 420 (2nd Dist. 1987); and also Cantigny Trust v. Department of Revenue, 171 Ill.App.3d 1082 (2nd Dist. 1988). In the Benedictine Sisters case, the Court considered whether or not three caretakers' residences on the grounds of a convent qualified for exemption. The Court applied the MacMurray tests, and at page 329, concluded as follows:

Obviously the Caretaker's residences here do not meet either test, as the caretakers are not performing any religious duties, and as no religious activities are carried on in the residences. (Emphasis supplied.)

In this case, the foregoing reasoning is applicable to the caretaker's apartment as the caretaker is not performing any of his duties in his apartment, and he does not perform any charitable duties on behalf of the applicant. Concerning the caretaker's security duties, it is undisputed that he does not perform any of those duties in his apartment. In addition, the mansion is equipped with both a fire alarm and a burglar alarm which notify the appropriate government agency. I therefore conclude that it was not reasonably necessary that this caretaker reside in the mansion because of his security duties.

In the situation where an identifiable portion of a property was used for an exempt purpose while another identifiable portion was used for a nonexempt purpose, the Illinois Courts

have held that the portion used for exempt purposes qualified for exemption, and the remainder did not qualify for exemption. City of Mattoon v. Graham, 386 Ill. 180 (1944); Highland Park Hospital v. Department of Revenue, 155 Ill.App.3d 272 (2nd Dist. 1987); and Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (4th Dist. 1987).

I consequently conclude that Morgan County Parcel Index No. 12-08-20-237-003 and the mansion thereon should be exempt from real estate taxation for the 1995 assessment year, except for the caretaker's quarters located on the second floor of the mansion on this parcel, consisting of 1333 square feet and 9.7% of the land on which the mansion is located.

I therefore recommend that Morgan County Parcel Index No. 12-08-20-237-003 and the mansion thereon be exempt from real estate taxation for the 1995 assessment year, except for the caretaker's quarters located on the second floor of the mansion on this parcel, consisting of 1333 square feet and 9.7% of the land on which the mansion is located.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
July 20, 1998